



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/618,805	07/14/2003	William R. Kutzner	15289Z	5795

23389 7590 03/25/2004

SCULLY SCOTT MURPHY & PRESSER, PC
400 GARDEN CITY PLAZA
GARDEN CITY, NY 11530

EXAMINER

GRILES, BETHANY L

ART UNIT	PAPER NUMBER
----------	--------------

3643

DATE MAILED: 03/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/618,805	Applicant(s) KUTZNER, WILLIAM R.	
	Examiner Bethany L. Griles	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. The use of the trademark "Portland cement" has been noted in this application. It should be capitalized wherever it appears and be accompanied by the generic terminology.

Although the use of trademarks is permissible in patent applications, the proprietary nature of the marks should be respected and every effort made to prevent their use in any manner which might adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-7, 10-13, 15-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Pease, Sr. US2709317.
3. Regarding claim 1, Pease, Sr. discloses a containment member A containing a base and a surrounding wall surface (fig 1) therein defining an open interior chamber and an open upper surface, said surrounding wall surface including a plurality of perforations (col 1, line 65) therein permitting release of the chum from the chamber;

Art Unit: 3643

anchoring means 15 at the base of the chamber A within the chamber; lowering means E for lowering the container to an underlying surface location, the lowering means being operatively connected to the anchoring means 15; sealing and unsealing means 10, C for sealing and unsealing the upper surface of the containment member; said lowering means penetrating through the sealing and unsealing means 10, C; said lowering means E including locking means 10 for locking in position the sealing means for sealing the upper open member; and locking means 10 capable of movement on said lowering means E.

4. Regarding claim 2, Pease, Sr. discloses the containment member further comprises a weighting material disposed at said base (col 2, line 28 discloses the cylinder may be made of metal).

5. Regarding claim 3, Pease, Sr. discloses that the weighted material at least partially surrounds the anchoring means 15, except a portion of the anchoring means at which said lowering means E is operatively connected to the anchoring means.

6. Regarding claim 4, Pease, Sr. discloses that the anchoring means 15 is at least partially surrounded by the weighting material, and said anchoring means 15 is substantially exposed to the interior region of the containment member A.

7. Regarding claim 5, Pease, Sr. discloses that the anchoring means 15 is capable of being unlocked in a single action (col 2, line 16).

8. Regarding claim 6, Pease, Sr. discloses the lowering means E further comprises a limiting means 10, 18 for limiting movement of said sealing and unsealing means and said locking means on said lowering means (fig 2).

Art Unit: 3643

9. Regarding claim 7, Pease, Sr. discloses the containment member is substantially cylindrical (fig 1).

10. Regarding claim 10, Pease, Sr. discloses the containment member and sealing and unsealing means is comprised of plastic material (col 2, line 28).

11. Regarding claim 16, Pease, Sr. discloses a portion of the sealing and unsealing means is of a curvilinear shape (fig 4).

12. Regarding claim 17, Pease, Sr. discloses that the sealing and unsealing means comprises at least one perforation 18.

Regarding claims 18 and 19, Pease, Sr. discloses that at least one locking tab which permits outward folding of said tab to seal and unseal said sealing and unsealing means to and from said open upper surface of the containment member (col 2, line 14).

Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 11, 8, 9, are rejected under 35 U.S.C. 103(a) as being unpatentable over Pease, Sr.

15. Regarding claims 8 and 9, Pease, Sr. does not disclose the use of cement as a weighted material.

Art Unit: 3643

16. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the weighted material of cement, as it is old and notoriously well known in the art to sink objects via the use of cement (ie cement shoes).

17. Regarding claim 11, Pease, Sr. discloses a plastic material.

18. Pease, Sr. does not disclose that the plastic is high-density polyethylene.

19. It would have been obvious to one of ordinary skill in the art at the time the invention was made to make the plastic cylinder of high-density polyethylene, as the choice of plastic used (as disclosed by Pease, Sr.) would be an obvious matter of design choice, and no criticality has been assigned to the use of high-density polyethylene.

20. Claims 12, 13, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pease, Sr. in view of Rainey US5651209.

21. Regarding claim 12, Pease, Sr. does not disclose that the the sealing and unsealing means is comprised of a luminescent material.

22. Rainey discloses that the sealing and unsealing means is comprised of a luminescent material (col 1, line 60).

23. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Rainey to the invention of Pease, Sr. in order to make the chum bucket more attractive to game fish.

24. Regarding claim 13, Pease, Sr. discloses the chum delivery container.

25. Pease, Sr. does not disclose a luminescent, phosphorescent material.

Art Unit: 3643

26. Rainey discloses a luminescent, phosphorescent material (col 1, line 62).

27. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Rainey to the invention of Pease, Sr. to make the chum dispenser of phosphorescent material in order to make the chum bucket more attractive to game fish.

28. Regarding claim 15, Pease, Sr. discloses the chum delivery container.

29. Pease, Sr. does not disclose a luminescent, phosphorescent material.

30. Rainey discloses a luminescent, phosphorescent material (col 1, line 62).

31. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Rainey to the invention of Pease, Sr. to make the chum dispenser of phosphorescent material in order to make the chum bucket more attractive to game fish.

32. Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Pease, Sr. in view of Faria US 4254093.

33. Regarding claim 14, Pease, Sr. discloses the chum dispenser.

34. Pease, Sr. does not disclose a luminescent material is cadmium-zinc sulfide.

35. Faria discloses a cadmium-zinc sulfide luminescent material.

36. It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of Faria to the invention of Pease, Sr. as cadmium-zinc sulfate is a known material to create luminescent materials.

Conclusion

37. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Schachte US2719382; Morena US2731908; Chiodini US4138794; Levey US5617669; Stevens et al. US6530171; Erickson US2979853.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bethany L. Griles whose telephone number is 703.305.1839. The examiner can normally be reached on Monday through Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 703.308.2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Bethany L. Griles
Examiner
Art Unit 3643

Application/Control Number: 10/618,805

Page 8

Art Unit: 3643

A handwritten signature, possibly reading 'vlf', in black ink.

blg

A handwritten signature in black ink, appearing to read 'Peter M. Poon'.

Peter M. Poon
Supervisory Patent Examiner
Technology Center 3600

3/22/04